



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-119-FOR; OSM-2012-0013]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: We are approving, on an interim basis, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Surface Coal Mining and Reclamation Act (WVSCMRA) to effect changes concerning the special reclamation tax and apportionment of this tax. This amendment is intended to increase and extend the special reclamation tax. Moreover, a specific portion of this tax

will be allocated to the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems on forfeited mine sites. We are approving the reinstatement of the special reclamation tax, its increase to twenty-seven and nine-tenths cents per ton of clean coal mined, as well fifteen cents of the amount collected allocated for deposit to the Special Reclamation Water Trust Fund.

DATES: Effective Date: This rule is effective **[Insert date of publication in the Federal Register]**. Comment Date: We will accept written comments until 4:00 p.m., EST **[Insert date 30 days after date of publication in the Federal Register]**. If requested, we will hold a public hearing on **[Insert date 25 days after date of publication in the Federal Register]**. We will accept requests to speak until 4:00 p.m., EST on **[Insert date 15 days after date of publication in the Federal Register]**.

ADDRESSES: You may submit comments by any of the following two methods:

- **Federal eRulemaking Portal:** www.regulations.gov. The proposed rule has been assigned Docket ID: OSM-2012-0013. If you would like to submit comments through the Federal eRulemaking Portal, go to www.regulations.gov and follow the instructions.
- **Mail/Hand Delivery:** Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV-119-FOR) with your written comments.

Instructions: All submissions received must include the agency Docket ID (OSM-2012-0013) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see “IV. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: The interim rule and any comments that are submitted may be viewed via the internet at www.regulations.gov. Look for Docket ID OSM-2012-0013. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347-7158. E-mail: chfo@osmre.gov.

West Virginia Department of Environmental Protection, Division of Mining and Reclamation, Mr. Thomas L. Clark, 601 57th Street, SE, Charleston, WV 25304, Telephone: (304) 926-0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291-4004.
(By Appointment Only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347-7158. E-mail: chfo@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description and Submission of the Amendment

- III. OSM's Findings
- IV. Public Comment Procedures
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "...a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, Federal Register (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Amendment

By letter dated April 27, 2012, and received on April 27, 2012, (Administrative Record Number WV-1577), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Enrolled Senate Bill 579, relative to West Virginia's alternative bonding system. As detailed in WVDEP's April 27, 2012, Transmittal Letter, "Senate Bill 579 amends § 22-3-11 of the Code of West Virginia to implement actuarial recommendations relating to the continuing fiscal viability of the Special Reclamation Fund." Subsection 22-3-11(h)(1) of the WVSCMRA is substantively amended by increasing the amount of the special reclamation tax to twenty-seven and nine-tenths cents per ton of clean coal mined. The former special reclamation tax, effective as of July 1, 2009, required remittance of fourteen and four-tenths cents per ton of clean coal mined; the collection of this tax is eliminated and replaced with the aforementioned amount. Additionally, the amended language requires fifteen cents per ton of the collected twenty-seven and nine-tenths cents per ton, be deposited in the Special Reclamation Water Trust Fund (the Fund). Historically, although not codified, WVDEP allocated three cents per ton of clean coal mined to finance the Fund, resulting in a severely underfunded account. It is forecasted that the imposition of the new rate enumerated in Senate Bill 579 will ease the strain placed on the Fund.

Formatting and style changes have been effectuated via Senate Bill 579. Former paragraph (h)(1) is revised to add a caption entitled: *Rate, deposits and review*; additionally, the paragraph has been segregated to add four subparts that incorporate all the former language.

III. OSM's Findings

Effective upon publication of this interim rule, we are approving, on an interim basis, the revisions to Section 22-3-11 (h)(1) of the WVSCMRA, which reinstates and increases the Special Reclamation Tax and adds revenue for the Fund, provided that the special reclamation tax may not be reduced until the Special Reclamation Fund and the Fund have sufficient moneys to meet the reclamation responsibilities required in this section. Since these revisions increase revenues to the State's alternative bonding system, we find that they do not render the State's program less effective than the Federal regulations at 30 CFR 800.11(e). Because our approval of these revisions is interim in nature, and in order to satisfy the public participation requirements for approval or disapproval of State program amendments, we will accept comments on the reinstatement and increase in the Special Reclamation Tax and the additional funds allocated to the Fund in accordance with Section IV of this *Federal Register* notice. Following our review of the comments received, we will issue a final rule announcing the Director's final decision on the revisions to Section 22-3-1 (h)(1) of the WVSCMRA that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 USC 553(b)(3)(B), we find that good cause exists to approve the revisions to Section 22-3-11(h)(1) of the WVSCMRA on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that it would delay the start of the collection of the increased Special Reclamation Tax. Enrolled Senate Bill 579 becomes effective under State law on July 1, 2012, and the public interest in the accomplishment of prompt and thorough reclamation of bond forfeiture sites, including water treatment of discharges from the sites, will be adversely affected if the twenty-seven and nine-tenths cents per ton special reclamation tax cannot be collected on and after that effective date. As explained above, the public will have an opportunity to comment on the reinstatement and increase in the special reclamation tax and the allocation of fifteen cents per ton of the tax allocated to the Fund, before we make a final decision.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written comments to OSM at one of the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. EST on **[Insert date 15 days**

after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under

ADDRESSES. We will make a written summary of each meeting a part of the Docket for this rulemaking.

V. OSM's Decision

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on April 27, 2012. To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 – Takings

This rule does not have takings implications. This determination is based on an analysis of the State submission.

Executive Order 12866 - Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 – Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211 - Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State previously had a special reclamation tax of \$0.144 per ton of clean coal mined. The tax is used to reclaim bond forfeiture sites in the State. On March 30, 2012, the Governor signed into law a bill that reinstated and increased the special reclamation tax to \$0.279 per ton of clean coal mined and allocated \$0.15 of that tax to the Fund for the purpose of designing, constructing and maintaining water treatment systems at bond forfeiture sites. Upon full implementation, the increased tax rate of \$0.279 will yield approximately \$ 36 million annually in additional revenue for bond forfeiture reclamation. The \$0.15 per ton tax that is allocated to the Fund will provide approximately \$20 million annually for water treatment at bond forfeiture sites. The tax is payable by all coal operators mining coal in West Virginia, regardless of size.

Small Business Regulatory Enforcement Fairness Act

Based upon the above analysis and discussion, we have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. - based enterprises to compete with foreign-based

enterprises.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

May 9, 2012

Date

Thomas D. Shope, Regional Director
Appalachian Region

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948 - WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 948.15 is amended by adding a new entry to the table in chronological order by “Date of publication of final rule” to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
***** April 27, 2012	** [<u>Insert date of publication in the Federal Register</u>]	W. Va. Code 22-3- 11(h)(1)(interim approval)

[FR Doc. 2012-16847 Filed 07/10/2012 at 8:45 am; Publication Date: 07/11/2012]